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Chalkers Fight for Free Speech

by Elaine Charkowski

As the City of Santa Cruz contemplates school closures and budget cuts, one area where no scrimping is occurring is the City Attorney's Office, which has already spent an estimated \$10,000 to prosecute local activists Tim Rinker and Becky Johnson for using sidewalk chalk on a sidewalk to convey political messages.

Attorney Ed Frey is appealing their September 27th conviction. Even the City has agreed that chalking with erasable chalk does not constitute permanent damage. Not to be dissuaded, the City was back in the court of Commissioner Irwin Joseph on February 14 to prosecute Johnson for two more incidences of using sidewalk chalk last summer.

Commissioner Joseph dismissed one ticket when the "citizen" complainant, Mia Duquet, a Parks and Recreation employee who filed the original charge, failed to show up for court the day of trial. Nor did the arresting officer, the supervising sergeant, or the witness interviewed in the police report.

In that incident, Johnson was arrested, handcuffed, booked into county jail, thrown in the drunk tank, and assigned a \$1000 bail. Her misdemeanor "vandalism" charges were without explanation reduced to an infraction — "defacing the sidewalk" — thereby denying her both a jury trial and a public defender.

In the September trial, seven city employees were called to the stand (all on the taxpayer's dollar) to testify that sidewalk chalk is a menace to Santa Cruz and must be stopped, no matter the price. A war is looming against Iraq, 26 homeless people died in Santa Cruz County this past year, and the Citizens Police Review Board has been eliminated due to budget restraints. Yet justice against sidewalk chalkers must prevail!

"I was ticketed on July 21st," defendant Becky Johnson explained, "when the second reading of the anti-homeless downtown ordinances was only two days away. These ordinances vastly limit where people can play music, set up a political table, sit, beg, or perform; and I was merely chalking the edges of the 'safe zones' so that the public could see how small the areas were going to be."

City officials acknowledge that their official maps showing the safe zones were inaccurate. Rinker and Johnson

both claim that using sidewalk chalk to write political messages is a First Amendment activity, does no damage to the sidewalk and is easily removed. The "defacing" ordinance in question makes no mention of sidewalk chalk as a prohibited activity.

"Redevelopment Agency analyst Julie Hendee testified at my first trial," said Johnson. "She basically said that chalking leads to lawlessness, leads to vandalism, leads to the decline of sales in businesses and leads to loss of revenue for the City. I think that's a pretty big stretch. That's like saying drinking mother's milk in childhood leads to heroin addiction."

"Basically what we have is an ordinance which has been on the books unchanged since 1964, but only in the last two or three years have the police begun using this ordinance against sidewalk chalkers and then, only against activists and homeless people."

After massive testimony in public hearings in October, the Citizens Police Review Board asked the City Council to halt any selective enforcement by the police. Three months later, the City Council abruptly eliminated the board as a "budget move" and buried their "End Selective Enforcement" resolution instead of putting it on the council agenda.

In Johnson's conviction, Joseph dismissed her concerns that she was targeted as a political activist. He ruled that erasable chalking on the sidewalk is not a constitutionally protected activity. "Commissioner Joseph has no love of the First Amendment," said Robert Norse.

All such chalking apparently now constitutes "defacement." Police, however, have been ignoring chalkers at peace protests, such as that attended by Mayor Emily Reilly herself on February 15.

Johnson's misdemeanor vandalism arrest was for writing in the gutter: "Are we so mean-spirited that we would deny a homeless person the right to sleep at night, to beg for food with a sign after dark, to sit, or to cover up with a blanket?"

Johnson's trial has been continued to March 14 at 10:00 a.m. in Department 1 because Officer Phelps revealed that there a police report and an audio tape had not been provided to the defense.

Photos of the arrest of Becky Johnson can be viewed at <http://huffsantacruz.org/becky>. For more information, call HUFF at (831) 423-HUFF or call Johnson at (831) 429-8529.